

STATE OF MONTANA TERM CONTRACT

Department of Administration
State Procurement Bureau
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Helena, MT 59620-0135
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<http://www.discoveringmontana.com/doa/gsd>

T.C. #: SPB05-954D
Title: MERCURY CONTAINING LAMP RECYCLING
This is a non-exclusive contract.

CONTRACT TERM	FROM	JULY 1, 2005	CONTRACT STATUS	NEW ()
	TO	JUNE 30, 2006		RENEW (xx) This is the first renewal, second year of the contract.
VENDOR ADDRESS	ONYX ENVIRONMENTAL SERVICES 709 NORTH TAYLOR WAY, STE 1 NORTH SALT LAKE CITY, UT 84054		ORDER ADDRESS	
ATTN:	PAUL VAN DER BOSCH		ATTN:	
PHONE:	801-294-7111		PHONE:	
FAX:	801-294-7333		FAX:	
E-MAIL:	Pvanderbosch@onyxes.com		E-MAIL:	

PRICES: PER CONTRACT
DELIVERY: PER CONTRACT
F.O.B.: PER CONTRACT
TERMS: PER CONTRACT

REMARKS:

Contractor's EPA I.D. number: AZ0000337360

IFB/RFP No.: SPB05-954D

RHONDA R. GRANDY, CONTRACTS OFFICER

DATE:

AUTHORIZED SIGNATURE

Standard Terms and Conditions

By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.

ACCEPTANCE/REJECTION OF BIDS, PROPOSALS, OR LIMITED SOLICITATION RESPONSES:

The State reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the State. Bids, proposals, and limited solicitation responses will be firm for 30 days, unless stated otherwise in the text of the invitation for bid, request for proposal, or limited solicitation.

ACCESS AND RETENTION OF RECORDS: The contractor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance (Mont. Code Ann. § 18-1-118). The contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

ALTERATION OF SOLICITATION DOCUMENT: In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a vendor's response, the language contained in the State's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

ASSIGNMENT, TRANSFER AND SUBCONTRACTING: The contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Mont. Code Ann. § 18-4-141.)

AUTHORITY: The following bid, request for proposal, limited solicitation, or contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

COMPLIANCE WITH LAWS: The contractor must, in performance of work under the contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

CONFORMANCE WITH CONTRACT: No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent of the State Procurement Bureau. Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the contractor's expense.

DEBARMENT: The contractor certifies, by submitting this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by the State.

DISABILITY ACCOMMODATIONS: The State of Montana does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals, who need aids, alternative document formats, or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

FACSIMILE RESPONSES: Facsimile responses will be accepted for invitations for bids, small purchases or limited solicitations ONLY if they are completely received by the State Procurement Bureau prior to the time set for receipt. Bids, or portions thereof, received after the due time will not be considered. Facsimile responses to requests for proposals are ONLY accepted on an exception basis with prior approval of the procurement officer.

FAILURE TO HONOR BID/PROPOSAL: If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/contract) or, fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the bidder/offeror for a period of time from entering into any contracts with the State of Montana.

FORCE MAJEURE: Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

HOLD HARMLESS/INDEMNIFICATION: The contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

LATE BIDS AND PROPOSALS: Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to assure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

PAYMENT TERM: All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the State is allowed 30 days to pay such invoices. All contractors will be required to provide banking information at the time of contract execution in order to facilitate State electronic funds transfer payments.

RECIPROCAL PREFERENCE: The State of Montana applies a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for nonconstruction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved. For a list of states that grant resident preference, see <http://www.discoveringmontana.com/doa/gsd/css/Resources/ReciprocalPreference.asp>.

REFERENCE TO CONTRACT: The contract or purchase order number MUST appear on all invoices, packing lists, packages and correspondence pertaining to the contract.

REGISTRATION WITH THE SECRETARY OF STATE: Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 4443665, or visit their website at <http://www.sos.state.mt.us>.

SEPARABILITY CLAUSE: A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

SHIPPING: Supplies shall be shipped prepaid, F.O.B. Destination, unless the contract specifies otherwise.

SOLICITATION DOCUMENT EXAMINATION: Vendors shall promptly notify the State of any ambiguity, inconsistency, or error, which they may discover upon examination of a solicitation document.

TAX EXEMPTION: The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED: Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Mont. Code Ann. § 18-5-603.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

TERMINATION OF CONTRACT: Unless otherwise stated, the State may, by written notice to the contractor, terminate the contract in whole or in part at any time the contractor fails to perform the contract.

UNAVAILABILITY OF FUNDING: The contracting agency, at its sole discretion, may terminate or reduce the scope of the contract if available funding is reduced for any reason. (Mont. Code Ann. § 18-4-313 (3).)

U.S. FUNDS: All prices and payments must be in U.S. dollars.

VENUE: This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Mont. Code Ann. § 18-1-401.)

WARRANTIES: The contractor warrants that items offered will conform to the specifications requested, to be fit and sufficient for the purpose manufactured, of good material and workmanship and free from defect. Items offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the State. They shall be equal in quality and performance to those indicated herein. Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance and/or use desired. Exceptions will be rejected.

MERCURY CONTAINING LAMP RECYCLING

SCOPE

The State of Montana, Department of Administration, State Procurement Bureau (SPB) has awarded this Term Contract to Onyx Environmental Services, LLC for pick-up, transporting and recycling of mercury containing lamps. The pick-up areas encompass the cities of Missoula, Helena, Billings, Butte, Bozeman, Kalispell, Great Falls, Miles City, Deer Lodge and Warm Springs.

1.0 CONTRACTOR REQUIREMENTS

- A. The contractor agrees to make quarterly pick ups throughout the contract period, (January, April, July and October) from any participating agency requesting recycling services.
- B. The contractor will supply all participating agencies an adequate supply of shipping boxes and/or 55 gallon drums for packaging of used and/or crushed lamps. Containers will adequately protect lamps from damage during shipment. All containers must be DOT shippable.
- C. The contractor is solely responsible for loading all containers onto contractor's vehicle. Shipping labels will be supplied by the contractor. Title for the material shall pass from the agency to contractor at such time as the waste is loaded and signed for by contractor's authorized representative at agency's facility.
- D. Upon arrival at contractor's facility, the contractor's technicians will verify labeling on all pallets delivered, verify accuracy of the accompanying shipping documents, and schedule the lamps for processing.
- E. Unbroken straight fluorescent lamps will be automatically counted as they enter the contractor's recycling equipment, providing an accurate count of the number of straight tubes actually recycled. Non-straight lamps will be counted separately or weighed prior to processing. The operator records the count at the end of each lamp type run. This count provides the basis for billing.
- F. Work must be completed in accordance with current federal, state, and local regulation, laws and rules. The contractor is solely responsible for keeping up to date on any changes in laws, rules, regulations, etc. The State of Montana adopted the "Universal Waste" rules, which includes electric lamps on January 27, 1997.
- G. Contractor will supply proper labels for all packages of lamp waste. Contractor will label all packages at the time of pickup. Labels must contain, but not limited to, the following information:
 - i. contents of package and date filled
 - ii. name, address and telephone number of the generator, transporter, and recycler.
- H. All shipments of lamp waste will be accompanied by appropriate manifest/shipping documents from initial pick up point to recycling facility. Manifest/shipping documents will be signed by agency personnel, contractor's truck driver, and upon receipt of lamps by the contractor's lamp recycling facility.

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- I. The contractor will provide the generating agency a final signed copy of the manifest, within 35 days of pick up.
- J. Contractor will provide to agency customers certification verifying that all lamp waste has been delivered to recycling facility in accordance with all rules, regulations, permits and licenses. Certification will be in writing and will include but will not be limited to the following information:
 - i. originating customer name and address
 - ii. date and location of processing
 - iii. description of process (i.e., component separation, reclamation, etc.)
 - iv. reference number from manifest/shipping documents accompanying original waste

2.0 AGENCY REQUIREMENTS

- A. Participating agencies will provide the necessary information for the shipping document to be completed by the contractor upon pickup. Agency will retain copy of shipping documents.
- B. Agency is responsible for palletizing, shrink wrapping, and securing all containers for transport of full pallets.
- C. To the greatest extent possible, agencies are encouraged to use the original shipping boxes.
- D. Agencies must request lamp pick up a minimum of five calendar days prior to the start of the new quarter.
- E. Agencies shall reimburse contractor for taxes, tariffs, fees, surcharges, or other charges imposed by the State of Montana by legislation or regulations enacted or promulgates after the execution date of the contract and levied specifically upon the transportation, storage, processing, or recycling of the material covered by this contract upon thirty (30) days written notice of such change in legislation and upon submission by contractor of evidence that such charges have been levied or paid.
- F. The State of Montana and using agencies shall allow for price increases only upon renewal, providing such price increases have been submitted on or before March 1st.

3.0 CONTRACT TERM

This initial contract took effect on July 1, 2004, and terminated on June 30, 2005, unless terminated earlier in accordance with the terms of this contract. (Mont. Code Ann. § 18-4-313.) The current term contract period is from July 1, 2005 through June 30, 2006. This is the first renewal, second year of the contract.

4.0 CONTRACT RENEWAL

This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be renewed in one- year intervals, or any interval that is advantageous to the State, for a period not to exceed a total of seven years.

5.0 COST/PRICE ADJUSTMENTS

Cost Increase by Mutual Agreement. After the initial term of the contract, each renewal term may be subject to a cost increase by mutual agreement.

6.0 COOPERATIVE PURCHASING

Under Montana law, public procurement units, as defined in section 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Public procurement units are defined as local or state public procurement units of this or any other state, including an agency of the United States, or a tribal procurement unit. Unless the bidder/offeror objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these public procurement units.

7.0 NON-EXCLUSIVE CONTRACT

The intent of this contract is to provide state agencies with an expedited means of procuring supplies and/or services. This contract is for the convenience of state agencies and is considered by the State Procurement Bureau to be a “Non-exclusive” use contract. Therefore, agencies may obtain this product/service from sources other than the contract holder(s) as long as they comply with Title 18, MCA, and their delegation agreement. The State Procurement Bureau does not guarantee any usage.

8.0 ON-SITE REQUIREMENTS/CLEANUP

Each potential contractor should visit the job site to verify measurements and to become fully aware of the conditions relating to the project and the labor requirements. Failure to do so will not relieve the successful contractor of their obligation to furnish all materials and labor necessary to carry out the provisions of the contract.

The contractor shall adequately protect the work, adjacent property, and the public in all phases of the work. The contractor shall be responsible for all damages or injury due to their action or neglect.

The contractor shall maintain access to all phases of the project pending inspection by the State or its representative.

All work rejected as unsatisfactory shall be corrected prior to final inspection and acceptance. The contractor shall respond within seven calendar days after notice of observed defects has been given and shall proceed to immediately remedy these defects. Should the contractor fail to respond to the notice or not remedy the defects, the State may have the work corrected at the expense of the contractor.

In terms of cleanup, the contractor shall:

- (a) keep the premises free from debris and accumulation of waste;
- (b) clean up any oil or fuel spills;

9.0 TERM CONTRACT REPORTING

Term contract holder(s) shall furnish annual reports of term contract usage. Each report shall contain the product description, total quantity sold of each item, total dollars expended, and the name of the agency purchasing the item. The first report for this term contract was due on July 15, 2005 and on July 15th of each year thereafter.

Reported volumes and dollar totals may be checked by the State Procurement Bureau against State records for verification. Failure to provide timely or accurate reports is justification for cancellation of the contract and/or justification for removal from consideration for award of contracts by the State.

10.0 INSURANCE REQUIREMENTS

General Requirements: The Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

Primary Insurance: The Contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

Specific Requirements for Commercial General Liability: The Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds; for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.

Deductibles and Self-Insured Retentions: Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, and volunteers; or (2) at the expense of the Contractor, the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

Certificate of Insurance/Endorsements: A certificate of insurance from insurer with a Best's rating of no less than A- indicating compliance with the required coverages has been received by the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

11.0 COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status. Neither the Contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the contract. A renewal document must be sent to the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135, upon expiration.

12.0 MONTANA PREVAILING WAGE REQUIREMENTS

Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or nonconstruction services in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Unless superseded by federal law, each contractor shall ensure that at least 50% of the contractor's workers performing labor on a construction project are bona fide Montana residents. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with sections 18-2-403 and 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Furthermore, section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.

Each contractor, subcontractor, and employer must maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less

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than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

The Commissioner of the Montana Department of Labor and Industry has established the standard prevailing rate of wages in accordance with sections 18-2-401 and 18-2-402, MCA, for mercury lamp recycling services to be as follows according to district:

DISTRICT	WAGE	BENEFIT RATE	CITIES INCLUDED DISTRICT
1	\$13.00	\$5.22	Kalispell
2	\$12.82	\$4.95	Missoula
3	\$13.59	\$4.60	Butte, Deer Lodge, Warm Springs
4	\$11.48	\$4.24	Great Falls
5	\$12.40	\$4.44	Helena
6	\$12.38	\$2.94	Bozeman
8	\$12.46	\$2.92	Billings
10	\$12.21	\$2.93	Miles City

Districts 7 & 9 are not included in this Term Contract.

14.0 QUOTE SECTION

Award was made on an all-or-none basis. The cost for pick up shall remain the same regardless of pick up location(s). Pick up areas are to include the following cities: Missoula, Helena, Billings, Butte, Bozeman, Kalispell, Great Falls, Miles City, Deer Lodge and Warm Springs, Montana.

A. Whole Lamps:

Straight tubes are standard, non-shattershield lamps. Shatterproof lamps will be accepted at the discretion of the contractor.

Quantity in any combination of 4' equivalents	Cost per single lamp			
	4' Straight tubes	8' Straight tubes	4' U Tubes	HID
1-399	\$.40	\$.80	\$.69	\$1.12
400-959	\$.40	\$.80	\$.69	\$1.12
960-1920	\$.35	\$.75	\$.64	\$1.12
Greater than 1921	\$.35	\$.75	\$.64	\$1.12

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B. Crushed Lamps:

Maximum cost per 55 gal Drum	
1 Drum	\$1.25/lb
2 Drums	\$1.25/lb
3 Drums	\$1.25/lb
Greater than 3 Drums	\$1.25/lb

C. PCB Ballasts:

\$.75/lb

Non PCB Ballasts:

\$.75/lb